

PAUL HASTINGS

May 8, 2024

VIA ECF

Hon. Sidney H. Stein
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *United States v. Robert Menendez et al.*, S4 23 Cr. 490 (SHS)

Dear Judge Stein,

We respectfully submit this letter on behalf of Senator Robert Menendez to request an order requiring the government to produce a list of all serial numbers the government collected from the cash seized from the Senator's marital home.

On multiple occasions over the past several weeks, defense counsel has asked the government whether it has recorded the serial numbers from the cash seized from the Senator's residence.¹ The government has refused to directly answer our repeated inquiries, and has instead directed us to photos produced of cash seized from the home that are too blurry to identify the serial numbers on all bills. In so doing, the government essentially asks us to manually record all serial numbers from bills by hand (if that's even possible), when the FBI likely used an automated cash counter to record those serial numbers, as would be standard operating procedure.

It is impractical for the defense to proceed in this way given the thousands of bills that were seized—all of which remain in the government's possession—and the blurry images that have been shared with the defense. The serial numbers are “material to preparing the defense” and were on “item[s] . . . obtained from or belong[ing] to the defendant[s].” *See* Fed. R. Cr. P.

¹ We first made this request on April 24, then again on May 3, May 6, and twice on May 7. Late yesterday the government finally responded that “photos of the bills were already produced in discovery” and that any “lists of serial numbers” collected would constitute work product. When we followed up to resolve this dispute and hopefully avoid this application, the government doubled down: “We are not aware of any obligation to answer your question about the existence or non-existence of work product the investigative team may have created. We are also unaware of any authority requiring us to produce any work product that the Government may have created as part of its trial preparation.”

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16(a)(1)(E)(i); 16(a)(1)(E)(iii). Any such list of serial numbers are plainly discoverable and should have been produced long ago.

Indeed, the government plans to call a witness from the Federal Reserve Bank to testify about a subset of those serial numbers (on approximately 4,975 bills), which the government apparently provided to the Federal Reserve electronically. The government does not appear to have provided the serial numbers for all the bills to the Federal Reserve Bank, and we do not even know how many thousands of additional bills were seized.² Nevertheless, the other serial numbers are material to our defense, irrespective of whether the government intends to have their witness testify about those other serial numbers.

The government claim of work product protection is not compelling. It is our understanding that whenever the FBI seizes large volumes of cash, the FBI records all serial numbers from the bills for tracking and investigative purposes. If that occurred here, then it certainly is not work product, but a log of evidence, no different than all the other FBI logs the government routinely produces.

To be clear, we are not requesting any work product from the prosecutorial team regarding those serial numbers—just the pure output from the cash counter or whatever other method was used to create a log of the serial numbers. This is not a difficult ask, yet the government, despite professing in Court their intention to cooperate with defense requests, continues to resist. We are unfortunately compelled to seek this relief from the Court.

Respectfully submitted,

/s/ Adam Fee

Adam Fee
Avi Weitzman

² While the Federal Reserve Bank witness will testify about approximately 4,975 bills, those bills add up to a total of \$287,750. In light of the fact that approximately \$486,461 was seized from the house, it is reasonable to presume that there are many thousands of bills whose serial numbers have not been inventoried for the defense.